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September 17, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

As a member of the Broadband Deployment Advisory Committee (BDAC) and as Executive Director of the Georgia Municipal Association, I write to express my grave concerns with the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order (the Order) regarding state and local governance of small cell wireless infrastructure deployment. My comments seek to address:

- **Cost-Based Fees are Not Fair and Reasonable.**
- **The Order's Aesthetic Considerations Are Flawed and One-Sided.**
- **The FCC's proposed new collocation shot clock category is too extreme.**
- **Use of the BDAC materials without highlighting local government concerns and objections is misleading as is use of the preliminary work of the Rates and Fees Working Group without acknowledgement the committee has yet to make its final recommendations to the full BDAC.**

I. The Georgia Municipal Association

The Georgia Municipal Association (GMA) is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit, and technical consulting services to its members. It is the only state organization that represents municipal governments in Georgia. Currently, GMA's membership totals 521 municipal governments, accounting for more than 99% of the state's municipal population.

I am not just a voting member of the FCC's Broadband Deployment Advisory Committee (BDAC), I also served as Vice-Chair of the Model Code for Municipalities Working Group, served on the Harmonization Working Group, and presently serve on the Rates and Fees Working Group. I have been conscientious to balance the interest of all parties in this process and to be a voice of reason and compromise, while working with the various committees to reach consensus.

While the GMA and I share the Commission's goal of ensuring the growth of broadband services for all Americans, we remain deeply concerned about several provisions of the FCC's Third Report and Order. Local governments have an important responsibility to protect the health, safety and welfare of residents, and we are concerned that these preemption measures compromise that traditional authority and expose local governments to unnecessary liability by requiring them to treat different users of the right of way in unequal financial terms. As an example, Georgia's cities have successfully negotiated agreements with industry partners that are beneficial to all parties. Forcing a one-size-fits-all preemption order is not the answer to achieving nationwide deployment of broadband infrastructure.

II. Cost-Based Fees are Not Fair and Reasonable.

The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation. We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately $270 per small cell site. In fact, the FCC's report acknowledges there is precedent that "fair and reasonable" can mean not only cost-based, but also market-based. As the FCC is aware, the BDAC Rates and Fees Working Group was provided information from over 1,200 local agreements from throughout the country showing the median fee for pole attachments and use of public right of way is significantly higher than this proposed order. The FCC's report references the 20 states that have passed small cell legislation as a basis for its recommendation. However, this fails to acknowledge that of the 20 state agreements, 10 of them do not address (or apply to) local fees required to access rights of way. Also, it dismisses the fact that 30 states have not adopted such bills, including 11 states in which such legislation was presented but either did not pass, was never voted on, or was vetoed.

Importantly, providers of electricity, telephone, gas, and cable have historically agreed to compensate local governments at fair and reasonable, market-based rates to use the public right of way. These providers understand that using the public right of way is a cost-effective privilege that is good for their business model because it is more cost effective and timely than acquiring private property one parcel at a time from individual property owners. This arrangement has been an accepted market-based practice for decades and has served the interests of all parties to include local governments, utilities, states, providers and customers.

The Commission's proposed Order dismisses the market-based compensation standards that have served this country well for 100-plus years. In addition, the Order's proposed fee structure is inconsistent with local governments' position of treating all users of the public right of way in a non-discriminatory manner. Limiting rates and fees to an arbitrary number forces taxpayers to subsidize private, commercial development, without any corresponding obligation on providers to serve communities in need or contribute to closing the digital divide in those markets. It imposes a requirement on a local government to treat wireless providers with more favorable terms than legacy providers and electric, cable and other utilities without the responsibility for these new providers to serve the entire community as other utilities must do.

Local taxpayers should not be required to subsidize the placement of new technologies in the rights-of-way. Federal law does not require this but instead recognizes that existing and new users of the rights-of-way should be treated in a competitively neutral and nondiscriminatory manner. Franchise fees are a well-known and long-established cost of doing business for users of the rights-of-way. They are not paid by

providers but instead are collected from consumers and thus pose no impediment to infrastructure deployment by companies. Furthermore, there is no requirement on small cell providers that receiving preferential treatment on fees in dense, urban areas where they want to invest will result in deployment in rural and unserved areas where they have decided not to invest.

The FCC's proposed rate structure fails to account for the differences in the value of right of way in dense urban areas vs. rural, sparsely populated areas. For the past eight months, the FCC's own BDAC Rates and Fees Working Group has thoughtfully researched and is continuing to work to reach consensus on a fee proposal that reflects differences between the value of sites in rural vs. dense urban areas and incorporates recommendations based on one-time fees such as applications and recurring fees such as pole attachments and right of way access. The proposed fee structure in the Order circumvents the Rates and Fees Working Group's efforts and is inconsistent with several principles the group adopted.

In 2016, GMA successfully negotiated a model rights-of-way licensing agreement with Mobilitie, LLC, for placement of equipment in municipal rights-of-way. The model agreement has been provided to GMA's member cities for their use in reaching their own individual agreements with wireless and small cell providers regarding the placement of facilities in the rights-of-way. The model agreement has been successfully used by Mobilitie, AT&T, Verizon, and Crown Castle with various Georgia cities. The model agreement imposes reasonable regulations on the placement and maintenance of equipment in the rights-of-way while also addressing reasonable compensation to be paid for a company's use of the rights-of-way. This model agreement represents efforts of GMA and its member cities to facilitate small cell deployments in a manner that is fair to all parties. Far from being a barrier to wireless broadband deployment, cities in Georgia are working to streamline processes for deploying broadband in their communities.

Providers of new technologies complain loudly about local government costs presenting a barrier to broadband deployment yet seem more than willing to raise fees on consumers. AT&T recently more than doubled an "administrative fee" on every customer's wireless bill, which will result in the company taking in nearly $1 billion a year in new revenue. This administrative fee is no different than a franchise fee in that both are an add-on to a customer's bill. One proposal before the Rates and Fees Working Group would impose a 5% communication services fee paid by customers, with 3% going to the owner of the public rights-of-way and 2% being used to create a deployment fund in each state to help subsidize broadband deployment to rural, unserved and underserved areas. Nothing in the proposed FCC order results in achieving the overarching goal of the BDAC to stimulate nationwide deployment and bridge the economic gap in remotely populated areas to make investment financially feasible. A second proposal before the Rates and Fees Working Group would create a fee range for applications, pole attachments and right of way usage. This would set a floor and a ceiling for fees, thereby respecting that America's rural and urban areas, its cities, counties and states are not best served by an arbitrary, one-size fits all fee mandate.

III. The Order's Aesthetic Considerations Are Flawed and One-Sided.

GMA strongly opposes restricting local aesthetic requirements or adequate historical review. Cities establish aesthetic standards based on input from their residents to address unique local concerns. Aesthetic characteristics are unique to each community and help establish a distinct "sense of place."

These locally-developed guidelines have a direct bearing on a city's quality of life, its economic development efforts and ultimately impact property value, jobs, and residential and business tax levels in a community. Aesthetic requirements for wireless infrastructure in a small mountain city such as Helen, Georgia, will vary greatly from a historic coastal city like Savannah, Georgia. Federal standards cannot adequately address the unique concerns of every community in America.

The FCC's Order effectively removes public input from citizens and taxpayers to local elected officials and grants this power to an unelected federal agency.

IV. The FCC's proposed new collocation shot clock category is too extreme.

The proposed shot clock timelines are inconsistent with the BDAC's own Model Code for Municipalities Working Group's adopted code**.** Importantly, this Working Group's recommendations were adopted by unanimous vote by both the Working Group and the full BDAC. The Working Group and the BDAC are comprised of an overwhelming majority of industry representatives, who by their vote, supported more reasonable overall shot clock timelines. The proposed order designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent potentially harmful historic preservation, environmental, or safety impacts to local communities. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal.

The harsh timelines proposed in the Order would limit the resources cities have for other public needs, such as reviewing plans and applications for new business and industry, thus impacting economic development and job creation. Small cell applications require the same amount of time and oversight to review as other applications. Each one is for a unique location and must be reviewed for conflicts and any public safety, utility conflicts, sight visibility or transportation impacts.

75% of cities in Georgia have a population of fewer than 5,000. City governments often have very limited staff available to perform a myriad of day to day administrative tasks for the city, from issuing building permits to processing water bill payments and maintaining all records and documents for the city. If the application is complicated, it will take municipal staff longer to process and review it. The Order dismisses local governments' lack of resources to deal with batched applications.

Furthermore, while the Order prescribes shot clocks for local governments, there is no corresponding requirement for deployment of services. If there is such an urgent demand for permit review, there must be a similar demand for deployment. Therefore, the Commission should require the same shot clock for wireless providers to deploy their services.

V. The Order ignores the work of the BDAC.

For over a year, the members of the FCC's BDAC have worked in good faith to develop recommendations for model codes and rates and fees. Chairman Pai extended the BDAC through March 2019. We request that BDAC be given time to work through the process before the FCC issues regulations on the matter of wireless broadband deployment.

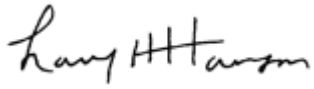
The goal of the BDAC is to recommend ways to facilitate broadband deployment nationwide, to address underserved and unserved areas of the country. Nothing in this Order furthers that goal. Rather, the Commission has chosen the best interests of the wireless industry over that of the public. The wireless industry itself has acknowledged that small cells are not the solution for rural America. The technology is not conducive to use in sparsely populated areas. With small cells having a limited range, it is an urban solution which is not economical for rural areas.

The FCC should not require local governments and local citizens to subsidize wireless providers with no guarantee whatsoever that broadband services will be provided to all of America. Other ideas have been suggested to attain the goal of universal deployment, such as AT&T's Project AirGig and communications services fees. We believe additional focus should be given to those solutions rather than advancing policies that raise the profit of private companies at the expense of local taxpayers and consumers.

GMA supports local authority to put into place regulations and procedures that will facilitate broadband deployment while protecting community values and allowing for reasonable compensation for the use of public rights--of-way. GMA has successfully cultivated working relationships with small cell providers such as Mobilitie, AT&T, Verizon, and Crown Castle, allowing them to deploy broadband equipment in communities throughout the state while complying with local regulations that preserve community values. GMA urges the FCC to allow local governments the flexibility to continue to negotiate with small cell providers to arrive at mutually beneficial arrangements for broadband deployment. We urge the Commission to incentivize efforts like those that are working in Georgia, rather than focusing on efforts to preempt or harm local governments.

We urge partnership, respect for local decision making, non-discriminatory treatment of all users of public right of way, and policies that both stimulate and guarantee service to all. We urge you to oppose this declaratory ruling and order and allow the BDAC to complete the work you created it to accomplish.

Respectfully submitted,



Larry H. Hanson
Executive Director